

FORM -:- A

IN THE COURT OF SENIOR MUNICIPAL MAGISTRATE CALCUTTA
-:- PRESENT -:- Smt. Parijat Kumar (JO Code No. WB-01111) Senior Municipal Magistrate <u>Calcutta</u>
GR CASE NO. 285 OF 2023
T. R. NO.
CNR NO. WBCS03-000490-2023
Case under Section 401A/392 r/w 584/610 and section 618 of Kolkata Municipal Corporation Act, 1980.
Delivery date of Judgment: 15th day of July, 2026.
Details of the FIR/ Police Station – The instant case is in connection with Tiljala Police Station Case No. 165 dated 27.04.2019

COMPLAINANT	-:-	STATE OF WEST BENGAL
PRESENTED BY	-:-	Sri Somraj Dhar, Learned A.P.P. Senior Municipal Magistrate Court, Calcutta
Name of accused person	-:- -:-	(1).Sabita Das
Represented by	-:-	Ld. Advocates Anirban Dutta and Sweta Modi

FORM -:- B

Date of Offence	-:-	On or before 26.04.2019
Date of FIR	-:-	27.04.2019
Date of Charge-Sheet	-:-	23.10.2023
Date of Framing of Charge	-:-	07.06.2024
Date of commencement of evidence	-:-	21.11.2024
Date on which judgment is reserved	-:-	Not Applicable.
Date of the judgment	-:-	14.07.2026
Date of the sentencing order, if any	-:-	14.07.2026

-:- **ACCUSED DETAILS** -:-

Rank of the accused	Name of Accused	Date of Arrest	Date of release on Bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of detention undergone during Trial for purpose of Section 428 CrPC.
01.	Sabita Das	Voluntarily surrendered	01.04.2024	401A/392 r/w 548/610 and section 618 of KMC Act	Convicted	S.I and Fine	N.A

FORM -:- C

-:- **LIST OF PROSECUTION/DEFENCE/COURT WITNESSES** -:-

A. PROSECUTION :-

Rank	Name	Nature of evidence (eye witness, police witness, expert witness, medical witness, panch witness, other witness)
01.	Mousam Bhattacharjee	Assistant Assessor Collector, Assessment Department, TTD, KMC
02.	Samir Kumar Dutta	Assistant Engineer, Building Department, Borough – VII, KMC.
03.	Priyabrata Mukherjee	Sub-Assistant Engineer, Building Department, Borough – VII, KMC.
04.	S.I. Debnath Sinha	Investigating Officer of this case.

B. DEFENCE WITNESSES, IF ANY :-

Rank	Name	Nature of evidence (eye witness, police witness, expert witness, medical witness, panch witness, other witness)
Nil	Nil	Nil

C. COURT WITNESSES, IF ANY :-

Rank	Name	Nature of evidence (eye witness, police witness, expert witness, medical witness, panch witness, other witness)
Nil	Nil	Nil

-:- LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS -:-

(A). PROSECUTION :-

Sl. No.	Exhibit Number	Description
01.	Exhibit-P1/PW1	Demand Details
02.	Exhibit-P2/PW1	Inspection Book
03.	Exhibit-P3/PW1	Computerized Assessee List
04.	Exhibit-P4/PW2	Certified copy of Stop Work Notice
05.	Exhibit-P5/PW2	Service Return
06.	Exhibit-P6/PW2	Police Intimation
07.	Exhibit-P7/PW2	SAE Report
08.	Exhibit-P8/PW2	Written Complaint
09.	Exhibit-P9/PW2	Day to Day Inspection Report
10.	Exhibit-P10/PW2	Building Rules and Infringement Statement
11.	Exhibit-P8/1/PW4	Endorsement
12.	Exhibit-P11/PW4	Formal FIR
13.	Exhibit-P12/PW4	Rough Sketch Map
14.	Exhibit-P13/PW4	Photographs
15.	Exhibit-P14 collectively/PW4	Notice u/s 91 Cr.P.C to Assessor Collector and reply
16.	Exhibit-P15 collectively/PW4	Notice u/s 91 Cr.P.C to Assistant Engineer, Building Department and reply
17.	Exhibit-P16 collectively/PW4	Notice u/s 91 Cr.P.C to Sewerage & Drainage Department and reply
18.	Exhibit-P17 collectively/PW4	Notice u/s 91 Cr.P.C to Water Supply Department and reply
19.	Exhibit-P18 collectively/PW4	Notice u/s 91 Cr.P.C to Fire Department and reply

(B). DEFENCE :-

Sl. No.	Exhibit Number	Description
	Nil	Nil

(C). COURT EXHIBITS :-

Sl. No.	Exhibit Number	Description
Nil	Nil	Nil

(D). MATERIAL OBJECTS :-

Sl. No.	Material Object Number	Description
Nil	Nil	Nil

1.Facts of the case

1.1. The case of the prosecution as is revealed from the record revolves around offences attracting sections 401A/392 read with sections 584/610 and section 618 of the Kolkata Municipal Corporation Act, 1980 (hereinafter referred to as KMC Act) allegedly committed by Sabita Das (hereinafter referred to as accused).

1.2. Going through the written complaint, the principal allegation appears to be unauthorized construction flouting the rules and regulations of KMC Act and building rules promulgated in reference to it. Sabita Das and others were found to be the persons responsible for undertaking said unauthorized construction work at 14/15, Choubhaga Road, Ward-66, Br-VII (hereinafter referred as the case premise). It is the specific allegation of the prosecution that on inspection by the department it was detected that columns were being erected at ground floor along with roof shuttering work at second floor level at the case premise without obtaining any sanctioned plan, preparatory to such work. As mandated under KMC Act, notice u/s 401 of the said Act vide number 2851 was served upon Sabita Das and others on 10.12.2018 and intimation of the same was sent to Tiljala P.S on 10.12.2018. Subsequently, during re-inspection on 26.04.2019 Sabita Das and others were found to be continuing the unauthorized construction in the case premise in blatant defiance of the Stop Work Notice. By that time roof casting at second floor level had already been completed. Furthermore, the defacto complainant expressed that the legality of the unauthorized construction, structural stability of the existing structure and workmanship are unknown to their department and if continuance of the same is allowed, it may cause danger to human lives as because the building may collapse any moment. Moreover, the construction has been done without following the norms and practice of civil engineering. Due to the said unauthorized construction, safety of the public in general is compromised.

1.3. Considering the gravity of the situation, complaint was lodged against Sabita Das and others u/s 401A of the KMC Act after completion of all necessary official formalities required to be taken up at the end of the complainant's department , on being prima facie satisfied about the nature and commission of the offence and Sabita Das and others being covered under the status of 'person responsible' under the said Act.

1.4. After receiving the complaint, formal FIR was drawn up and Tiljala P.S. Case No. 165 dated 27.04.2019 was initiated against Sabita Das and others which ultimately came to a natural end on filing Charge sheet no. 188 dated 23.10.2023 against the accused namely Sabita Das.

1.5. On the basis of charge-sheet so submitted in connection with this case, cognizance was taken by this Court.

1.6. The accused person namely Sabita Das subsequently surrendered before this court and she was enlarged on bail. Thereafter, the copies of police report and relevant documents or relevant extracts thereof forwarded with the police report under section 173 of the Cr.P.C. were furnished to the accused person, free of cost, in accordance with the provisions of Section 207 of the Cr.P.C.

1.7. After compliance of the provision enshrined under section 207 of the Cr.P.C, upon consideration of police report and the documents sent with it under section 173 of the Cr.P.C, after hearing both sides, the Court formed opinion that there was sufficient ground for presuming that the accused person has committed offence triable and punishable under Section 401A/392 read with sections 584/610 and section 618 of the Kolkata Municipal Corporation Act, 1980. On 07.06.2024 formal charge under Section 401A/392 read with sections 584/610 and section 618 of the Kolkata Municipal Corporation Act, 1980 was framed against the charge-sheeted accused person. The contents of the charge was read over and explained to him. The accused person pleaded to be not guilty and claimed to be tried and accordingly, this Court proceeded into trial for the examination of the witnesses.

1.8. Subsequently, after completion of the evidence of prosecution, as per mandate of law the accused person was examined under section 313 of the Code of Criminal

Procedure on 14.10.2025 putting the necessary questions before her which transpired during trial. During the examination of the accused it was stated before this court that she does not intend to adduce evidence and as a result the defence witness was closed. The defence case as it appears from the trend of cross-examination of the witnesses and from the answer given by the accused person at the time of her examination under section 313 of the Code of Criminal Procedure is denial of the prosecution case with stress on her innocence. After hearing both sides on the points of argument this date was fixed for delivery of judgment.

- **Argument on behalf of Prosecution**

The prosecution opened the argument stating that they have successfully brought home the charges framed against the accused on the basis of cogent, reliable and unrebutted evidence, both oral and documentary. It is further submitted that the main aim of the Kolkata Municipal Corporation Act is to amend and consolidate the laws relating to the municipal affairs of Kolkata. Whereas it is imperative to obtain sanctioned plan before initiating any construction work within the jurisdiction of Kolkata Municipal Corporation u/s 396 of the Act, the accused person completely disregarding the same has raised illegal construction at the case premises. There is direct and substantial evidence in support of the same. Furthermore, it must be taken into account that such unauthorized construction which still exists is not only a source of continuous menace for the immediate locality and the society at large but also hinders the natural growth of a city and cannot be ignored. The nature of the unauthorized construction at the said premises also poses a serious threat to the safety of human life and limb and may disintegrate the services providing basic amenities at or around the case premise. He prayed for conviction of the accused u/s 401A and other sections under which she has been charged.

- **Argument on behalf of Defence**

Ld. Advocate for the defence submitted that the accused has been falsely arraigned in this case without completing the prerequisites for filing of such complaint. He completely denied the charges framed and argued that the accused person is not

person responsible within the meaning of section 392/401A/618 of KMC Act. Ld. Advocate further submitted that the Stop Work Notice has not been duly served and the name of the P.R is not mentioned in the S.R. I.O failed to produce any document to prove that accused is the daughter of the recorded owner of the case premise. Prosecution has failed to prove the relation of the accused with the case premise. Evidence as provided by the prosecution is not complete and does not satisfactorily prove the guilt of the accused beyond reasonable doubt. He pointed out that it is the solemn principal of criminal jurisprudence that the prosecution must take the burden of proving its own case. But the accused can claim the benefit of any doubt which the prosecution fails to clarify. In view of the above arguments, Ld. Defence Counsel prayed for acquittal of the accused.

2. Points for determination

2.1. As the accused person has been charged under sections 401A/392 r/w sections 584/610 and section 618 of the Kolkata Municipal Corporation Act, 1980, so the prosecution is required to prove the following points.

a. Whether the accused person constructed/ erected or attempted to so construct/ erect or conspired to so construct/ erect columns at ground floor along with roof shuttering work at second floor level of the said premises in contravention of the provisions of the Kolkata Municipal Corporation Act, 1980 or the rules made thereunder, as endangers or is likely to endanger human life, or any property of the Corporation, whereupon the water supply, drainage or sewerage or the road traffic is disrupted or is likely to be disrupted or is likely to cause a fire hazard?

b. Whether the accused person erected or commenced to erect columns at ground floor along with roof shuttering work at second floor level of the said premises or executed any of the works specified in the sections 390 of the Kolkata Municipal Corporation Act, 1980 except with the previous sanction of the Municipal Commissioner, in accordance with the provisions of the Kolkata Municipal Corporation Act, 1980 in relation to such erection of building or

execution of work on payment of such fees as may be determined by the Corporation?

c. Whether the accused person failed to comply with any notice, order or requisition issued under any provisions of the Kolkata Municipal Corporation Act, 1980 or otherwise contravened any of the provisions of the said Act? AND

d. Whether the prosecution has been able to prove all the charges or any of the charges against the accused person and whether the accused is liable to be convicted and punished accordingly?

3. Burden of Proof and Onus Probandi

3.1. At this juncture it is necessary to refer some of the guiding principles of appreciation of evidence in criminal jurisprudence. The discussion should start referring to sections 101 and 102 of the Indian Evidence Act, 1872.

S. 101- Burden of proof.- Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

This section is based on the rule, i.e. **incumbit probation qui dicit, non qui negat**- the burden of proof of proving an act rest on the party who substantially asserts the affirmative of the issue and not upon the party who denies it; for a negative is usually incapable of proof.

S. 102. On whom burden of proof lies.- The burden of proof in a suit or proceeding lies on that person whom would fail if no evidence at all were given on either side.

This section embodies a test for ascertaining on which side the burden of proof lies. The prosecution having brought the charges against the accused is thus bound to prove the same or else the matter would fail. The accused on the other hand, must be presumed to be innocent until proven guilty. Presumption of innocence is a human right though subject to statutory exception. The nature of the

offence, its seriousness and gravity have to be taken into account into this consideration [Sunil Kumar Sambhudayal Gupta v. State of Maharashtra, 2011 Cr LJ 705 : (2010) 13 SCC 657]. Though for the prosecution this burden is initial and may be discharged by production of relevant evidence requiring the onus of proof to shift on the accused.

The extent of this proof in criminal cases is proof beyond reasonable doubt as the potential consequences for the other side are severe. But that does not mean absolute, metaphysical certainty which is practically impossible to achieve. Instead it requires a level of certainty that would satisfy a reasonable person. At the same time, the doubt cast on such proof produced by the prosecution must be reasonable, meaning it must be based on logic and commonsense and not on speculation or prejudice.

3.2 It is also necessary to note that it always the quality of the witnesses and not their quantity that is crucial for the just adjudication of a case. And the veracity of a witness can be best judged by comparing the ocular evidence with the available documentary exhibits.

List of prosecution witnesses is already provided (Supra) (Form no. C).

The list of all exhibited/admitted documents is already provided (Supra) (Form no. C).

In consideration of the above principles, the evidence forwarded by the prosecution must be discussed in detailed to determine if the ingredients of charges framed have been proved or not.

4. Decision with Reasons

4.1 The quintessence of the prosecution case is unauthorized construction within the purview of the KMC Act and non-compliance of directions/notices issued thereunder, thereby, attracting both penal provisions being 392/401A read with section 610 and section 618 of the KMC Act and demolition of the impugned construction by Court as provided under section 584 of the KMC Act.

4.2 At the onset it is necessary to mention that prosecution has brought charges under the above mentioned provisions against accused Sabita Das referring her to be “Person Responsible” for raising such construction.

4.3 It is also relevant to note that Kolkata Municipal Corporation Act being a special Act has delineated a specific window for initiating trial of the cases of instant nature before Court under section 620 of the said Act. The relevant provision is reproduced hereunder:

S. 620 Prosecutions- Save as otherwise provided in this Act, no Court shall proceed to the trial of any offence punishable by or under this Act except on the complaint of, or upon information received from the Municipal Commissioner or any person authorized by him by general or special order in this behalf.

Kolkata Municipal Corporation has issued Circular No.173 of 2019-2020 dated 04.03.2020 whereby Municipal Commissioner of Kolkata delegated his power under the KMC Act vide section 48, which reads as follows:

“ It is hereby ordered that the structure of delegation of Municipal Commissioner’s Power regarding various aspects of the Building Department of KMC will henceforth be as mentioned below:

Generation of ‘Stop work’ Notice u/s 401 of KMC Act – SAE (C/Building)/of concerned Borough/Ward

Notice u/s 401A of the KMC Act- Action against construction of building in contravention of the provisions of the Act or Rules- AE(C/Building)/of concerned Borough/Ward upon obtaining report from SAE(C/Building)/of concerned Borough/Ward

4.4 In consonance to the said provision, Samir Kumar Dutta bearing the post of Assistant Engineer (AE), Civil, Building Department, Br-VII KMC having jurisdiction over the case premise being no. 14/15, Choubhaga Road, Ward-66, Br-VII lodged the present complaint and has been examined as PW-2. He was assisted by Sub Assistant Engineer (SAE) of his Borough namely Priyabrata Mukherjee examined as PW-3 in conceptualizing the case. Investigating Officers i.e. S.I. Debnath Sinha examined as PW-4 was endorsed with the investigation of the case

and he prepared the formal FIR to initiate Tiljala P.S. Case No. 165 dated 27.04.2019. Additionally, Assistant Assessor Collector, Assessment Collection Department, TTD has been examined as PW-1.

4.5 At this stage, whether the evidence adduced from the side of the prosecution is enough to prove the case beyond reasonable doubts, is the matter which needs elaborate discussion. Prosecution has taken the lead to establish its case. The witnesses are all office bearers. Be that as it may, considering the nature of the offences with which the accused has been charged and the requirement of technical expertise to perceive the same, office bearers are the best witnesses on condition that they are able to prove the charges satisfactorily.

4.6 A detailed reading of both oral and documentary evidence on record suggest that the process of this case was set into motion when SAE examined as PW-3 visited the case premise along with AE examined as PW-2 on 10.12.2018 during routine inspection. This led to detection of construction of columns at ground floor along with roof shuttering work at second floor level at the case premise. They did not find any display board at the site of the construction and on demand nobody present at the site and engaged in construction work could produce any valid document in support of the construction work which led them to conclude that the said construction is unauthorized in nature. On further inquiry, they came to know that Sabita Das and others were the Persons Responsible for raising such construction. The said situation prompted them to take action and SAE prepared a Stop Work Notice u/s 401 KMC Act bearing his signature. The Stop Work Notice was received but S.R was refused to be signed. The certified copy of said notice and S.R have been marked as **Exhibit-P4** and **Exhibit-P5** respectively.

In this respect the specific provision u/s 591 of the KMC Act regarding admissibility of certified copies must be mentioned.

S. 591 Admissibility of document or entry as evidence – A copy of any receipt, application, plan, notice, order or other document or any entry in a register in the possession of any municipal authority shall, if duly certified by the legal keeper thereof or other person authorized by the Municipal Commissioner in this behalf,

be admissible in evidence of the existence of the document or entry, and shall be admitted as evidence of the matters and transactions therein recorded in every case where, and to the same extent to which, the original document or entry would, if produced, have been admissible to prove such matters and transactions.

Thus, the certified copy of documents as produced by AE from his official custody and duly certified by Executive Engineer Br-VII are admissible. Let us now discuss the other documents submitted by AE and the oral evidence forwarded by KMC Building Department.

After that SAE prepared an inspection report with sketch on the basis of which AE, Samir Kumar Dutta sent police intimation to Tiljala P.S on 10.12.2018 for restraining unauthorized construction at the case premises. Said police intimation has been marked as **Exhibit-P6 (certified copy)**. Subsequently, SAE revisited the case premises on 26.04.2019 and found the unauthorized construction being continued in blatant defiance of the Stop Work Notice. By that time roof casting at second floor level was completed. Accordingly, SAE prepared a report and its original copy has been marked as **Exhibit-P7**. On the basis of the said report, AE (PW-2) lodged written complaint/FIR at Tiljala P.S against the accused/P.R. The said written complaint duly signed by PW-2 has been marked as **Exhibit-P8**. During the several visits at the case premise, Day to Day Inspection Report was prepared reflecting the findings at the case premises and the corresponding steps taken by the department which has been collectively marked as **Exhibit-P9**. As the construction work was not stopped a proposal for demolition was made and building rule infringement statement was prepared which has been marked as **Exhibit-P10**. The total area of unauthorized construction was ascertained to be 545.10 sq. mtrs. The evidence of Assistant Engineer (PW-2) and Sub-Assistant Engineer (PW-3) are mutually corroborative. Both PW-2 and PW-3 deposed that the construction at the case premises was done without any sanctioned plan issued from their office and that no LBS/ESE report was found in respect of the alleged construction. There was no document of structural stability or quality of material used. There was no document of fire safety. Additionally, due to raising of such

kind of unauthorized construction, there is every possibility of the construction causing damage to the drainage, sewerage system and water supply. There is possibility of disruption of road traffic and fire hazard and there is every possibility of causing danger to human life and property.

4.7 Adhering to the cardinal principle of initial burden of proof on the prosecution, it is evident that in the cases of instant nature the prosecution must prove the following to succeed:

I) The corpus delicti i.e. the unauthorized construction.

II) Involvement of the accused in raising such unauthorized construction being person responsible.

4.8 At the same time, accused has challenged the instant proceeding mainly on the ground that the Stop Work Notice has not been duly served and the name of the P.R is not mentioned in the S.R. I.O failed to produce any document to prove that accused is the daughter of the recorded owner of the case premise. Prosecution has failed to prove the relation of the accused with the case premise. Accused has prayed for acquittal on this ground.

4.9 A detailed discussion of the evidence on record as produced by AE and SAE has to be undertaken to determine the factum probandum.

4.10 **Exhibit-P4 is the Stop Work Notice.**

Section 401 KMC Act is the underlying provision.

Exhibit-P4 is notice no. **2851** issued to PR Sabita Das and others for stopping all construction work including addition and alteration at premise no.14/15, Choubhaga Road, Ward-66, Br-VII dated 10.12.2018. **Exhibit-P5** is the return of service of the Stop Work Notice. Both **Exhibit-P4** and **Exhibit-P5** have been prepared by SAE, examined as PW-3 who had deposed that the said notice was duly served upon the P.R but the S.R was refused to be signed. That apart there is a specific column regarding the mode and manner of such service of notice. The categories are on the person addressed, on adult male member of present owners' family, on his servant, being affixed at the premise or sent by registered post. PW-3 has completely left this column blank. There is no explanation as to why the other

modes of service of notice were not used. PW-3 also had not acquired the signature of any independent witness to prove such refusal to sign.

4.11 Next document is the **Police Intimation** marked **Exhibit-P6**. PW-2 admitted that he had issued police intimation to O.C, Tiljala P.S referring to notice u/s 401(1) of KMC Act being served on the Person Responsible in reference to the case premises requesting followup action in prevention of unauthorized construction therein. To pursue the same further information given relates to the specifications of Stop Work Notice, status and nature of unauthorized construction. The nature of unauthorized construction is mentioned as construction of one storied RCC frame structure and fixing of shuttering at first floor roof over RCC columns.

4.12 **Inspection report** was again prepared by SAE (PW-3) when he visited the case premise on 26.04.2019 marked **Exhibit-P7**. This document describes that unauthorized construction of three storied building at the case premise undertaken without any building sanction plan. PR was served with Stop Work Notice u/s 401 of KMC Act and police intimation was duly received by Tiljala P.S on the same date. The said unauthorized construction was continuing defying all actions taken so far. The premise is situated in a congested area and if the construction is allowed to stand, the same will create several hazards such as fire, traffic, disruption of drainage, sanitation and water supply. Moreover, the construction has been done in a haphazard manner without following norms and practices of civil engineering and as such may collapse at any time causing harm to human lives. PW-3 solicited AE (PW-2) to deal with the matter as per KMC Act and Rules framed thereunder.

4.13 The **written complaint** marked **Exhibit-P8** was filed against PR, Sabita Das and others on 26.04.2019. The gist of the written complaint can be produced in the following manner:

- The case premise was inspected by Building Department, Br-VII KMC and unauthorized construction was found undergoing.
- SAE report is enclosed.

- If this construction is allowed to stand it may collapse at any date endangering human life and water supply, drainage, sewerage or the road or the road traffic and may cause fire hazard as per report mentioned above.
- Hence, written complaint was lodged u/s 401A of the KMC Act against the person responsible.

4.14 At this stage it is necessary to discuss the **Day to Day Inspection Report** marked **Exhibit-P9 collectively** to grasp the various stages before the filing of written complaint. The relevant document shows a hand drawn sketch of the case premises which is not to scale. There are two parts to the sketch i.e. plan and section. But the sketch is not legible. On perusal of the daily entries, the depositions of PW-2 and PW-3 are corroborated to the effect that on inspection it was found that PR has constructed one storied RCC frame structure and fixed shuttering at first floor roof level over RCC columns at the case premise without any building sanction plan. On demand PR could not produce any valid document for such construction and as a result Stop Work Notice was issued. PI was submitted. In entry dated 26.04.2019 it has been mentioned that the structure is three storied. Eventually, complaint was lodged and proceeding u/s 400 of the KMC Act was initiated.

4.15 **Infringement Statement** has been marked **Exhibit-P10**.

Infringement statement shows that several provisions of KMC Building Rules 2009 have been violated.

In violation of **Rule 62** no open space has been provided on any side of the building including front and rear.

In violation of **Rule 69**, FAR has been found as 3 where the permissible limit was 1.75.

In violation of **Rule 70**, 100% ground coverage is found where the permissible limit is 60%.

In violation of **Rule 78** no car parking has been provided where the statutory requirement was of 3.

Furthermore, nothing is known regarding structural design, quality of materials used and workmanship. As such, **Rules 133 and 134** have been violated respectively.

The total area of unauthorized construction is 545.10 sqm. (more or less).

The Infringement Statement was prepared on 02.12.2020.

4.16. During investigation I.O being S.I, Debnath Sinha deposing as PW-4 narrated that on 26.04.2019 he was endorsed with the investigation of this case. The relevant endorsement has been marked as **Exhibit-P8/1**. On the basis of the written complaint he prepared the formal FIR marked as **Exhibit-P11**. Thereafter, he visited the PO on 26.04.2019 and saw an under construction three storied building at the case premises. He specifically noted the case premises to be 14/15, Choubhaga Road, Ward-66, Br-VII. He prepared the rough sketch map marked **Exhibit-P12** and took photographs of the PO using his mobile phone which were printed from computer at PS and produced during his examination and were marked as **Exhibit-P13 collectively**. The statements of Debasish Das and Hari Das were recorded u/s 161 Cr.P.C. who have been duly cited in the charge sheet as corroborative local witnesses. These witnesses stated that Sabita Das is the person responsible for the construction at case premise. But he did not have any interaction with Sabita Das at the spot. During investigation I.O issued several notices u/s 91 Cr.P.C to Assessor Collector, Assistant Engineer, Building Department, Sewerage & Drainage, Water Supply Department and Fire Department. The relevant documents have been marked as **Exhibit-P14 collectively to P18 collectively**. During investigation accused could not produce any document in respect of the construction. The corporation had informed that there was no sanction in respect of the unauthorized construction. He came to know from the report of Assessor Collector that the recorded owner has expired and I.O collected the relevant death certificate. He further stated that the accused is the daughter of the recorded owner Rajani Kanta Das. Subsequently, charge sheet no. 188 dated 23.10.2023 u/s 401A of KMC Act was filed against accused and is tagged with the record.

The documents as produced by Investigating Officer are being discussed as here under.

4.17 **Exhibit-P11** is the **Formal FIR**. It has been prepared in the terms of the written complaint. The date of occurrence of offence has been mentioned as on or before 26.04.2019. Date of receipt of information is mentioned as 27.04.2019 even though I.O has stated that he was endorsed with investigation on 26.04.2019 and the relevant endorsement has been exhibited. This document also mentions the name of the complainant and the case premise number. The P.O is at a distance of 1 km from Tiljala P.S.

4.18 **Exhibit-P12** is the **Rough Sketch Map** where the P.O has been located by the side of Choubhaga Road but its surrounding premises have not been located.

4.19 **Exhibit-P13** are the **photographs** which have been marked collectively under this head. I.O has endorsed his signature and the relevant premise number at the back side of the photograph but no separate certificate has been attached. The photographs shows an under construction four storied building but the photographs are hazy.

4.20 **Exhibit-P14** marked collectively are the notice issued to **Assessment Department** by I.O along with the reply received. From these documents it is found that the case premises is recorded in the name of Est. Ranaji Kanta Das.

4.21 The **notice and reply pertaining to Assistant Engineer, Building Department** has been marked as **Exhibit-P15** collectively. It is found from the reply that no plan has been sanctioned in respect of the case premise. Building Rule Infringement Statement has been submitted under this head.

4.22 **Exhibit-P16** marked collectively is the **notice/reply pertaining to Sewerage and Drainage Department**. It has been replied that any unauthorized construction raised beyond sanction if collapses can damage the sewerage and drainage of the locality.

4.23 **Exhibit-P17** marked collectively is the **notice/reply pertaining to Water Supply Department**. It has been replied that on inspection they found a four

storied building at the case premise but they did not find any disruption in the water supply.

4.24 **Exhibit-P18** marked collectively is the notice/reply pertaining to Fire Department. It has been replied by the Fire Department that on inspection they found a G+III storied residential building at the case premise. The height of the building does not bring it under the purview of WBFS Act.

4.25 **Corpus delicti** means that before seeking to prove that the accused is the author of the crime it must be established that the crime charged has been committed. The strongest proof of corpus delicti in the instant case is to prove the existence of a construction which is unauthorized under the KMC Act and rules framed thereunder.

4.26 Before embarking on further discussion, it is necessary to discuss the provisions related to requirement of sanction before construction and consequences of contravention thereof. The relevant provisions being sections 390 (1) (a)/ (k), 393, 396, 398 of Kolkata Municipal Corporation Act, 1980 read with Rule 3 and 4 of Kolkata Municipal Building Rules, 2009 are enumerated for understanding the gravity of the offences alleged.

Section 390- In this Chapter, unless the context otherwise requires-

(1) the expression “to erect a building’ means-

(a) to erect a new building on any site, whether previously built upon or not.

(k) to make any addition to a building.

S. 393, Erection of building.- Every person who intends to erect a building shall apply for sanction by giving notice in writing of his intention to the Municipal Commissioner in such form together with such fees including Drainage Development fee and containing such information as may be prescribed:

Provided that the Corporation may also levy fees under this section with retrospective effect.

Section 396 provides for sanction or provisional sanction or refusal of building or work.

S. 398. When building or work may be proceeded with.- (1) Where within a period of sixty days or, in cases falling under clause (b) to clause (m) of Sub-section (1) of section 390, within a period of thirty days of the receipt of any notice under section 393 or section 394 or of any information under section 395 the Municipal Commissioner does not refuse the sanction to the erection of any building or the execution of any work or, upon refusal, does not communicate the refusal to the person who has given the notice, such person may make a representation in writing to the Mayor.

Provided that if it appears to the Municipal Commissioner that the site of the proposed building or work is likely to be affected by any scheme of acquisition of land for any public purpose or by any proposed regular line of a public street or extension, improvement, widening or alteration of any street, the Municipal Commissioner may withhold sanction to the erection of the building or the execution of the work for such period, not exceeding six months, as he may deem fit, and the period of sixty days or, as the case may be, the period of thirty days, specified in this sub-section, shall be deemed to commence from the date of the expiry of the period of which the sanction has been withheld.

(2) Where the erection of a building or the execution of a work is sanctioned the persons who has given the notice shall erect the building or execute the work in accordance with such sanction and shall not contravene any of the provisions of this Act or the rules or the regulations made thereunder or of any other law in force for the time being.

(3) If the person as aforesaid or any one lawfully claiming under him does not commence the erection of the building or the execution of the work within two years of the date on which the erection of the building or the execution of the work is sanctioned, he shall give notice under section 393 or, as the case may be, under section 394 for fresh sanction and the provisions of this section shall apply in relation to such notice as they apply in relation to the original notice.

(4) Such person shall, before commencing the erection of the building or the execution of the work within the period specified in sub-section (3), give notice

to the Municipal Commissioner of the proposed date of commencement of such erection or such execution:

Provided that if the commencement does not take place within fifteen days of the date so notified, the notice shall be deemed not to have been given and a fresh notice shall be necessary in this behalf.

The relevant provisions of Kolkata Municipal Corporation Building Rules, 2009 which must find mention here are as follows:-

Rule 3. Prohibition of erection of building without Building Permit.- (1) No person shall erect a new building, or re-erect, or make addition to, or alteration of any building, or cause the same to be done as specified in section 392, without obtaining a sanction in the form of a Building Permit from the Municipal Commissioner under the Act, and without obtaining such permission for development from the concerned authority as may be required under the West Bengal Town and Country (Planning and Development) Act, 1979 (West Ben. XIII of 1979).

Rule. 4. Notice for erection or alteration of a building.- (1) Every person who intends to erect a new building on any site whether previously built upon or not or re-erect or make addition to or alteration of any building shall apply for sanction by giving notice in writing to the Municipal Commissioner.

4.27 The trend of evidence as forwarded by prosecution suggests that during routine inspection, SAE along with AE visited the case premises and found construction of columns erected at ground floor along with roof shuttering at second floor level without any building sanction plan. Both AE and SAE have supported such fact and that as such Stop Work Notice was issued and police intimation was sent on the same date. It is further deposed that Stop Work Notice was defied and construction was carried on. It was found during re-inspection that further construction was going on and by that time roof casting at second floor level had already been completed and report was prepared accordingly. The said report supported the presence of three storied building at the case premise. On the basis of the said Inspection Report, complaint was lodged. The Day to Day

Inspection Report also support the progress of work at the case premise. Consequently, infringement statement were prepared on 02.12.2020. I have already discussed the infringement statement which revealed violation of Rule 62, 69, 70, 78, 133 and 134 of the KMC Building Rules. The area of the unauthorized construction is stated to be 545.10 sqm. Both AE and SAE have signed on this document. The said copy of Infringement Statement has been duly certified by Executive Engineer Br-VII.

I.O was also given similar copy of Infringement Statement during investigation which has been marked as **Exhibit-P15 collectively**. Hence, the Infringement Statement as submitted and proved can be accepted.

There is no confusion regarding the identification of the case premise which is 14/15, Choubhaga Road, Ward-66, Br-VII.

Investigating Officer prepared rough sketch map locating the PO and has taken several photographs of the PO which have been exhibited. I.O stated that he has taken these photographs using his mobile phone and obtained printouts from PS computer. Said mobile phone was never seized and produced before the Court. He has produced printed copies of the same which can be only admitted as secondary evidence. It must be noted that in **Arjun Panditrao Khotkar vs Kailash kushanrao Gorantyal & Ors**, 2020 INSC453 : (2020) 7 SCC 1 the Hon'ble Supreme Court has observed that the admissibility and proof of electronic record in the form of secondary evidence must follow the drill of Section 65B which is a special provision in this regard. The certification is mandatory. It has been further decided that the presentation of such a certificate could occur at any juncture prior to the commencement of the trial proceedings.

I.O has not only failed to produce any certificate for the photographs u/s 65B of the Indian Evidence Act at the time of filing charge sheet, he did not make any effort to cure the defect at any later stage. In this circumstance the photographs as exhibited do not hold any evidentiary value.

Be that as it may I.O being PW-6 confirmed the presence of three storied structure at the case premises for which he did not get any valid documents.

During investigation IO also received the reply of Water Supply Department and Fire Department marked **Exhibit-P17** and **Exhibit-P18** collectively. From both these documents it is revealed that on inspection a four storied building was found at the case premise.

At this stage, pertinently the cross examination of these witnesses must also be discussed regarding the fact of unauthorized construction. AE stated that no sketch was prepared at the time of lodging FIR. No complaint was received from other departments of KMC. The premises number is not mentioned in the Infringement Statement. SAE stated in the same tune as AE. IO stated that there is no signature of any person / witness who were present at the spot when the photographs were clicked. He did not submit any extract of GDE regarding his date and time of visit. He also did not receive any complaint from other departments of KMC.

The nature of cross-examination are basically directed towards their official processes, preparation of documents at office and lack of complaint from other departments. But the facts revealed during cross-examination are not found sufficient to dismantle the oral and documentary evidence as produced by the prosecution. Prosecution has sufficiently proved that construction was taken up at the case premises for which no sanction plan was found. The authority responsible for issuing sanction plan has only alleged that the construction at the case premises has been done without any sanction.

During examination u/s 313 Cr.P.C accused admitted that there is a four storied building at the case premise but she could not say about any sanction plan.

4.28 Section 392 of the KMC Act provides that no person shall erect or commence to erect any building or execute any of the works specified in section 390 except with the previous sanction of the Municipal Commissioner and in accordance with the provisions of this Chapter (ch-22) and of the rules and the regulations made under the KMC Act in relation to such erection of building or execution of work. Schedule VI of the Act provides the respective penalty.

4.29 It is clear from the above evidence that prosecution has established presence of unauthorized construction at the case premises undertaken without taking due

permission of the KMC. The nature of such construction pertains to the penal provision u/s 392 of KMC Act. The corpus delicti is thus proved.

4.30 Moving on to the next penal provision, section 401A of the Act starts with a non obstante clause and stipulates that notwithstanding anything contained in this Act or the rules made thereunder or in any other law for the time being in force, any person who being responsible by himself or by any other person on his behalf, so constructs or attempts to so construct or conspires to so construct any new building or additional floor or floors of any building in contravention of the provisions of this Act, or the rules made thereunder as endangers or is likely to endanger human life, or any property of the Corporation whereupon the water-supply, drainage or sewerage or the road traffic is disrupted or is likely to be disrupted or is likely to cause a fire hazard, shall be punishable with imprisonment of either description for a term which may extend to five years and also with fine which may extend to fifty thousand rupees. Here “Person” shall include an owner, occupier, lessee, mortgagee, consultant, promoter or financier, or a servant or agent of an owner, occupier, lessee, mortgagee, consultant, promoter or financier, who supervises or causes the construction of any new building or additional floor or floors of any building as aforesaid.

4.31 There is a basic difference in the nature of unauthorized construction covered under section 392 and section 401A of the KMC Act. Whereas the former covers within its ambit any unauthorized construction the latter does not punish every deviation but only those which contain gravity of endangering human life, limb and property along with dismantling the basic civic amenities. In this particular case it is well established that no sanction was taken for construction at the case premise. The investigating Officer during the course of investigation had issued several notices u/s 91 Cr.P.C for obtaining reports of the various departments being affected by any unauthorized construction. Pertinent to note that the Building Department of KMC filed the Infringement Statement to I.O. Sewerage and Drainage Department revealed that any unauthorized construction raised beyond sanction if collapses then the sewerage and drainage of the locality may be

affected. Water Supply Department did not find any disruption. Finally, the Fire Department reported that the height of the building does not bring it under the purview of WBFS Act 1950.

It must be perceived that the instant case is related to a building which stands without any form of sanction. Prosecution has proved its erection from first floor to fourth floor. The entire construction process has been taken up skipping every vigilance protocol of government specially structural assurance of any technical person either government impaneled or private. Structural stability certificate of the case premise is not available. The building rule infringement specifically states that nothing is known regarding the materials used, workmanship and structural stability.

4.32 In this situation the alleged unauthorized construction at the case site can be a catalyst leading to a catastrophe which may claim the life of the people using the building or the locality and can damage government property and basic amenities. Answering Ld. A.P.P for the prosecution, Assistant Engineer and Sub Assistant Engineer of KMC narrated during their examination-in-chief that no LBS/ESE report was found in respect of the alleged construction. There was no document of structural stability or quality of material used. Additionally, due to raising of such kind of unauthorized construction, there is every possibility of the construction causing damage to the drainage, sewerage system and water supply. There is possibility of disruption of road traffic and fire hazard and there is every possibility of causing danger to human life and property. The defence has not made any effort to dismantle the prosecution case with regard to the particular fact that this construction is not endangering human life or property or that there is no possibility of any fire hazard or disruption of traffic or disruption of water supply, drainage or sewerage system. There is also no evidence that the said unauthorized construction has been demolished. At this juncture it is pertinent to discuss the observation made by The Hon'ble Supreme Court of India relying upon several precedents; in **Dipak Kumar Mukherjee v. Kolkata Municipal Corporation, in Civil Appeal No. 7356 of 2012** on 8 October, 2012, which is quoted as follows:—

“8. What needs to be emphasized is that illegal and unauthorized constructions of buildings and other structure not only violate the municipal laws and the concept of planned development of the particular area but also affect various fundamental and constitutional rights of other persons. The common man feels cheated when he finds that those making illegal and unauthorized constructions are supported by the people entrusted with the duty of preparing and executing master plan/development plan/zonal plan. The reports of demolition of hutments and jhuggi jhopris belonging to poor and disadvantaged section of the society frequently appear in the print media but one seldom gets to read about demolition of illegally/unauthorizedly constructed multi-storied structure raised by economically affluent people. The failure of the State apparatus to take prompt action to demolish such illegal constructions has convinced the citizens that planning laws are enforced only against poor and all compromises are made by the State machinery when it is required to deal with those who have money power or unholy nexus with the power corridors.

27.....It must be remembered that while preparing master plans/zonal plans, the Planning Authority takes into consideration the prospectus of future development and accordingly provides for basic amenities like water and electricity lines, drainage, sewerage, etc. Unauthorized construction of buildings not only destroys the concept of planned development which is beneficial to the public but also places unbearable burden on the basic amenities and facilities provided by the public authorities. At times, construction of such buildings becomes hazardous for the public and creates traffic congestion. Therefore, it is imperative for the concerned public authorities not only to demolish such construction but also impose adequate penalty on the wrongdoer.”

In Sandhya Pal & Anr vs The Kolkata Municipal Corporation : W.P. No.- 11225 (W) of 2018 it has been observed that : The authorities cannot ignore the dicta of the Supreme Court in Dipak Mukherjee's case laid down in para 8.

In **K. Ramadas Shenoy v. Chief Officers, Town Municipal Council : (1974) 2SCC 506** the Hon'ble Apex Court has been pleased to observe that : An illegal construction.....materially affects the right to or enjoyment of the property by persons residing in the residential area.

In **Lakhu Dubey vs The Kolkata Municipal : WP 85 of 2014** it has been held that: **Unauthorized structures are a real threat to life and limbs and it is common knowledge that many an accident, including fatal accidents, have occurred by such unauthorised constructions collapsing without prior warning.**

In this instant case, considering the evidence as adduced by the prosecution in this respect it can be concluded that the alleged unauthorized construction raised at the case premises is of such a nature which is sufficient to attract the provision as enshrined under section 401 A of the Kolkata Municipal Corporation Act. Any construction without sanction has to be deemed unsafe as sanction is granted after examining structural safety aspects and after clearance from the fire services authorities. Section 400 contemplates action in all cases of unauthorized construction, be it unauthorized construction in contravention of the applicable building rules, be it commencement of construction without sanction of building plan or be it deviation from sanction. (**Partha Dey vs The Kolkata Municipal Corporation : WP 85 of 2014**).

4.33 The second consideration is the relation of the accused person with the unauthorized construction at the case premise. It is the duty of the prosecution to prove her as person responsible for under taking said unauthorized construction within the explanation as stipulated in section 401A KMC. Section 400(1) defines "the person at whose instance" applicable for the entire chapter 22 of the KMC Act including section 401 and section 401A.

The relevant provisions are noted for ease of discussion:

Section 400. Order of demolition and stoppage of buildings and works in certain cases and appeal.- (1).....

Explanation- In this Chapter, “the person at whose instance” shall mean the owner, occupier or any other person who causes the erection of any building or execution of any work to be done, including alterations or additions if any, or does it by himself.

S. 401. Order of stoppage of buildings or works in certain cases.- (1)

Where the demolition of any heritage building or the erection of any building or the execution of any work has been commenced or is being carried on without or contrary to the sanction referred to in section 396 or in contravention of any condition subject to which such sanction has been accorded or in contravention of any provisions of this Act or the rules or the regulations made thereunder, the Municipal Commissioner may, in addition to any other action that may be taken under this Act, by order, require the person at whose instance the building or the work has been commenced or is being carried on to stop the same forthwith.

S. 401A. Construction of building in contravention of the provisions of the Act or the rules made thereunder.- (1).....

Explanation- “Person” shall include an owner, occupier, lessee, mortgagee, consultant, promoter or financier, or a servant or agent of an owner, occupier, lessee, mortgagee, consultant, promoter or financier, who supervises or causes the construction of any new building or additional floor or floors of any building as aforesaid.

4.34 In this respect the KMC authority concerned through its Assistant Engineer and Sub Assistant Engineer i.e. PW-2 and PW-3 respectively revealed that they found Sabita Das and others to be the person responsible for the unauthorized construction at the case premises. Accordingly, they initiated the process through issuance of notice upon the person at whose instance the unauthorized work has been commenced and subsequent reporting in the name of above person was made. FIR was also lodged against the same person. During police investigation IO obtained the assessment details marked **Exhibit-P14 collectively** from where it is found that Est. Rajani Kanta Das is the recorded owner of the case premise. PW-1 appeared on behalf of assessment department and produced computerized Demand

Details marked **Exhibit-P1 collectively**. He also produced last Inspection Book of third quarter 2006-2007 in respect of case premises marked **Exhibit-P2**. Computerized Assessee List as produced has been marked as **Exhibit-P3**. All these documents referred to Est. Rajani Kanta Das to the recorded owner. From **Exhibit-P3** it is further found that the mailing address of recorded owner is C/O. Dharendra Chandra Das, 14/15, Chowbhaga Road. From record it further appears that Dharendra Chandra Das is the husband of the present accused. During examination u/s 313 Cr.P.C accused has admitted to be the owner of this case premise where she has lived her entire life.

4.35 Hence, in view of the materials available in record both oral and documentary and the admission of the accused during examination under section 313 Cr.P.C and further arguments of both the sides it is clear that prosecution has proved the unauthorized construction at the case premises and relation of accused person with the same being the owner of the case premise. Thus, the accused is found to be the Person Responsible for the unauthorized construction at the case premises.

4.36 Therefore, it can be concluded by saying that the prosecution has succeeded in proving the charges under Sections 392/401A of the Kolkata Municipal Corporation Act framed against the accused person namely Sabita Das beyond reasonable doubt.

4.37 The accused person is also charged for commission of offence punishable under Section 618 of the Kolkata Municipal Corporation Act. For convenience, the Section is reproduced here:

“ whoever, in any case in which a penalty is not expressly provided by this Act, fails to comply with any notice, order or requisition issued under any provision thereof, or otherwise contravenes any of the provisions of this Act, shall be punishable with fine which may extend to one thousand rupees, and in the case of a continuing failure of contravention, with an additional fine which may extend to one hundred rupees for every day after the first during which he has persisted in such failure or contravention.”

4.38 The penalty under this section would get attracted if the prosecution successfully proves issuance of notice upon the accused. **Exhibit-P4** is notice no. **2851** issued to PR Sabita Das and others for stopping all construction work including addition and alteration at premise no.14/15, Choubhaga Road, Ward-66, Br-VII dated 10.12.2018. **Exhibit-P5** is the return of service of the Stop Work Notice. Both **Exhibit-P4** and **Exhibit-P5** have been prepared by SAE, examined as PW-3 who had deposed that the said notice was duly served upon the P.R but the S.R was refused to be signed. That apart there is a specific column regarding the mode and manner of such service of notice. The categories are on the person addressed, on adult male member of present owners' family, on his servant, being affixed at the premise or sent by registered post. PW-3 has completely left this column blank. There is no explanation as to why the other modes of service of notice were not used. PW-3 also had not acquired the signature of any independent witness to prove such refusal to sign. Moreover, accused has denied receiving any such notice.

4.39 So at this stage, it would be safe to hold that the prosecution has failed in proving service of Stop Work Notice upon the accused person, beyond reasonable doubts. Accordingly it can be stated that the prosecution has failed in proving the specific charge framed against the accused person u/s 618 of the KMC Act, 1980.

4.40 Hence, the prosecution has succeeded in proving commission of offence punishable under Section 392/401A of the Kolkata Municipal Corporation Act, 1980 by the accused person namely Sabita Das facing trial.

5. Hence, it is.

O-R-D-E-R-E-D,

that the accused person namely **Sabita Das** is found guilty in respect of the charges framed against her for having committed offences punishable under sections 392/401A of the Kolkata Municipal Corporation Act, 1980 and she is

accordingly convicted in accordance with the provisions of Section 248 (2) of the Code of Criminal Procedure, 1973.

Bail bond of the accused person/ convict is cancelled.

The convict is taken into custody.

The surety is discharged from her respective bail bond.

5.1 Now the question is whether it would be expedient to release the convict on probation in terms of the provision of Section 360 of the Code of Criminal Procedure, 1973 or the provisions of the Probation of Offenders Act, 1958.

5.2 It has already been established that the accused person had undertaken the work of unauthorized/ illegal construction and which is of such a nature that it is endangering human life and property. The consequences of any unauthorized and illegal construction may cause huge damage and loss to life and property. The offender did not show any kind of responsibility towards the society and violated the law deliberately. Such desperate attitude of the offender cannot be treated leniently. Having regard to all circumstances, it seems that releasing the offender on probation shall not be sufficient to meet the ends of the justice. The offender should be punished to prevent such miscarriage of justice.

5.3 So now before awarding any sentence, as per the provisions of law, the Court is duty bound to hear the convict on the question of sentence.

5.4 The factum of conviction and the prescribed punishment for the offences punishable under section 392/401A of the Kolkata Municipal Corporation Act, 1980 are explained to the convict and an opportunity is given to her to produce any material as well as to lead any evidence, if necessary before the Court, with regard to the quantum of sentence that may be passed. The convict as well as her Ld. Counsel are also given liberty to express their views with regard to the sentence for the particular offences.

5.5 The convict pleaded innocence and prayed for mercy of the court. Ld. Advocate on behalf of the convict prayed for taking a lenient view in awarding sentence.

5.6 Considered respective prayers. Also considered the age of the convict and her social status. The offence in respect of which sentence is being passed is grave in nature and has got huge social impact. It needs no further discussion and is crystal clear that if unauthorized constructions are not dealt with a strict view, a bad notion would reflect and a proper message to the society won't be given.

6. Decision on Quantum of Sentence

6.1. Now the question that remains to be answered is what sentence should be passed upon the convict. The offence u/s 401A of the Kolkata Municipal Corporation Act, 1980 is punishable with imprisonment for a term which may extend up to five years and also with fine which may extend to Rs.50000/-.The other offences under section 392 of the Kolkata Municipal Corporation Act of which the accused person has been held guilty is punishable with imprisonment which may extend up to six months or with fine or both. In this case the intention of the convict must be taken into consideration. The convict has done construction at the case premises in unauthorized manner. She did not obtain any sanction for raising construction at the case premise. The convict has shown desperation in raising unauthorized building at the case premises.

The nature of unauthorized work which the convict undertook was not performed in the heat of the moment or temporary misjudgment. Such elaborate construction required prior planning and monetary investment. Thus, it would not be out of place to conclude that such violation was preplanned. Considering all such aspects, this Court is of the considered view that the convict deliberately abused established rules and laws and was well aware of the consequences of the alleged construction. Her intention is quite clear from her activities.

Primarily it has to be borne in mind that sentencing for an offence has a social goal. Sentence is to be imposed regard being had to the nature of the offence and the manner in which the offence has been committed. The purpose of just punishment is designed so that the individuals in the society do not suffer time and again due to such crimes. It must serve as a deterrent. The quantum of fine as provided in Section 401A/392 of the KMC Act does neither serve as a deterrent nor it would

compensate the civic authorities in handling any untoward incident relating to such construction. The monetary benefit which the convict would receive by utilizing the unauthorized portion of the construction is much more than the quantum of fine provided. Just punishment is the collective cry of the society and it must be imposed appropriately.

So at this stage, it appears to this Court that a stringent punishment should be given to the convict in the form of simple imprisonment coupled with fine. Accordingly, after having considered entire circumstances, this Court is of the considered view that passing of simple imprisonment upon the convict for a period of six months along with fine shall be just and reasonable.

7. So at this stage, having considered entire circumstances, it is

ORDERED.

that the convict namely **Sabita Das** to undergo simple imprisonment for six(6) months and also to pay fine of Rs. 50,000/- (Fifty Thousand only) , for the offence punishable under section 401A of the Kolkata Municipal Corporation Act, 1980. In default of payment of fine, to suffer simple imprisonment for three (03) months .

AND

the convict is also punished with fine of Rs. 2,500/- (Two thousand Five Hundred only), in default of payment of said fine to suffer Simple imprisonment for a term of one month for having committed offence punishable under section 392 of the Kolkata Municipal Corporation Act, 1980.

In case of imprisonment the sentences shall run concurrently.

7.1 The period of detention, if any, undergone by the convict during investigation, inquiry or trial of this case and before this date of conviction, be set off against the imprisonment imposed upon her and the liability of the convict to undergo imprisonment on conviction be restricted to the remainder, if any, of the term of imprisonment imposed upon her.

7.2 The convict is informed in the language understandable by her about her right to prefer appeal against this judgment including her right to avail of legal aid/ assistance in this regard. The convict has refused to avail legal aid.

8. Demolition of unauthorized, irregular, illegal and unlawful construction work.

8.1 Any construction work which is carried out without the sanction as referred to in section 396 of the Kolkata Municipal Corporation 1980 or in contravention of any provisions of the said Act and the rules and regulations made thereunder is liable to be demolished. If the Corporation is able to detect unauthorized and illegal construction work, a Stop Work Notice is generally served. Thereafter, the Municipal Commissioner deals with it u/s 400(1) or the Mayor In Council deals it u/s 400(8) of the said Act. U/s 400(1) the case is disposed of by hearing where the structure may be demolished/partly demolished/ fully retained considering degree of violation of Rule as well as structural safety. In cases where there is any danger and/or violation of rule, Kolkata Municipal Corporation may directly demolish the structure without giving chance of hearing u/s 400(8).

8.2 The Municipal Magistrate also has the power to direct demolition of unlawful construction in terms of Section 584 of the Kolkata Municipal Corporation Act, 1980. It is a discretionary power which must be exercised having regard to the larger public interest. Some basic things that needs to be considered is that any construction without sanction where it apparently appears to be grossly violating the provisions of law and where it seems to be affecting the interest of the general public should be demolished.

For convenience section 584 is reproduced here:

8.3 Section 584. Power of Municipal Magistrate to direct payment of fine and demolition of unlawful work:-

If, under this Act or the rules or the regulations made thereunder, any person is, in respect of any unlawful work, liable-

(a) to pay any fine, and also

(b) to demolish such work, a Municipal Magistrate may, in his discretion, direct such person to pay the fine and also to demolish the work.

8.4 Considering the documents exhibited, more so the infringement statement it appears that construction has been made in such a manner which is de hors the mandatory provisions of the KMC Act and further rules and regulations framed thereunder. Unless the building rules are implemented strictly the public safety and/or security cannot be maintained properly. The violation of the building rules is serious in nature and there is every chance of public nuisance and/or affection of the sanitation and ventilation of adjacent premises. The act of making unauthorized construction without sanctioned plan is a complete defiance of the provision of law and has to be reviewed seriously without any leniency.

8.5 Therefore, in this case it now appears that this is a fit situation where the discretion of the Court should be exercised as mandated in section 584 of the Kolkata Municipal Corporation Act.

8.6 At this juncture it is pertinent to mention herein that in the case of **Romeo Das VS The Kolkata Municipal Corporation & Ors. (IA NO. GA/1/2022 APOT 162 OF 2022 WITH WPO 2468/2022)** the Hon'ble High Court at Calcutta held that, **"Since the issue of whether or not, the Municipal Magistrate has power to order demolition under Section 584 of the Kolkata Municipal Corporation Act while convicting a person under Section-401A of the said Act for making illegal/unauthorized construction, is to be decided by a Larger Bench to be constituted by the Hon'ble Chief Justice, we are of the view that the order of demolition, in the present case, which ultimately stems from the order of the Municipal Magistrate, should be temporarily stayed until the aforesaid issue is decided by the Larger Bench. We accordingly, order so.**

8.7 We, however, clarify that this order will not, in any manner, stand in the way of the Corporation proceeding against the alleged unauthorized construction under other provisions of the Kolkata Municipal Corporation Act, 1980, observing due procedure."

8.8 As discussed above, after consideration of the observation made by the Hon'ble High Court, Calcutta with regard to exercise of discretionary power under Section 584 of this Act, this Court is not inclined to pass any order of demolition of the unauthorized construction undertaken by the convict over the case premises. However, as per further observation of Hon'ble High Court at Calcutta as reiterated above, this order shall not stand in the way of the Kolkata Municipal Corporation to proceed against the unauthorized, irregular, invalid, illegal and unlawful erection/construction work of the entire building at the case premise no. 14/15, Choubhaga Road, Ward-66, Br-VII under other provisions of the Kolkata Municipal Corporation Act, 1980 and/or relevant Rules/Regulations made thereunder.

9. Let a copy of this judgment be sent to the Municipal Commissioner, Kolkata Municipal Corporation for information.

10. Let a copy of this judgment be supplied to the convict free of cost.

11. The case stands disposed of. Note in the concerned register and upload in the CIS.

Dictated & Corrected by me

Senior Municipal Magistrate,
Kolkata,

Senior Municipal Magistrate,
Kolkata,